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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2011 SEP -8 PM 4:45  
SANDRA K MARKHAM, CLERK  
BY: TSB

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN DEMOCKER,

Defendant

P1300CR201001325

**MOTION TO MODIFY RELEASE  
CONDITIONS**

(Hon. Warren Darrow)  
(Hon. David Mackey)

The Defendant, by and through counsel undersigned, moves the court to Hear and Decide this Motion concerning Release conditions The Defendant is asking this Court for a significant bond reduction. The Defendant hereby incorporates all arguments previously made in his April 5, 2011 Motion to Modify Release Conditions: *Own Recognizance*.

The Court should take into consideration that the Defendant has been in custody for 3 years next month, and *has been in solitary confinement for eleven (11) months!*

For no justifiable reason, the Yavapai County Sheriff is unwilling to house the Defendant in any other dorm than a solitary confinement dorm (23 ½ hours in the cell per day). The Defendant's cell is searched and his legal documents have be gone through. Despite the Defendant's protests, guards have read through the his legal documents – which interferes with

the Defendant Right to Counsel.

Another important event has caused great concern. Recently, the Defendant's cell was searched. The Defendant's hand-made chess board and pieces were taken. The Defendant's chess board was made of a sheet of paper with lines drawn on it for the squares, with toilet paper pieces. This is not an uncommon practice. The inmates in proximity to the Defendant also had chess boards – but those boards were not seized. It simply cannot be argued that a game of chess is not a healthy mental activity to a person who is confined to a small cell 23 ½ hours a day. The Defendant and his 82-year-old father have been playing chess by phone since the Defendant's incarceration. They used to exchange a single chess move every day.

Put another more succinct way, the arbitrary seizure of that chess board seems like cruel, inhumane and arbitrarily imposed punishment.

Solitary confinement in this case has been the norm. The Jail's former excuse was "safety." The Defense does not agree that there were ever any bona fide safety issues. Solitary confinement is not a solution to an *imagined* danger. Solitary should be used only in extreme instances.

The Defendant is being denied human company, except for the guards. When released, he must do all of his cleaning, exercise and communicating with family in just 30 minutes. There have been times when the Defendant has been told that his attorney call count against his 30 minutes out. Can this truly be solely up to the discretion of the Jail?

Solitary confinement may adversely affect the Defendant's ability to participate in his defense. The Defendant has a Sixth Amendment Right to participate in his defense.

The United States Constitution guarantees more than a right to counsel. The fundamental guarantee of the sixth amendment is the defendant's right to control and participate in his defense.

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." ...


It is true that when a defendant chooses to have a lawyer manage and present his case, law and tradition may allocate to the counsel the power to make binding decisions of trial strategy .... This allocation can only be justified, however, by the defendant's consent, at the outset, to accept counsel as his representative.

Bishop v. Superior Court, 150 Ariz. 404, 406, 724 P.2d 23, 25 (Ariz.,1986), citing Faretta v. California, 422 U.S. 806, 819-20 (1975).


### **Conclusion**

Eleven months in solitary! It boggles the mind that this can happen in this country in 2011. While it has been repeatedly argued that the courts have no authority to order the Jail to change housing arrangements – because of separation of powers – the courts do have the power to address this outrageous situation. The courts can lower his bond. The Defendant requests the bond be reduced from \$1,000,000.00 cash only bond, to a \$250,000.00 secured bond.

RESPECTFULLY SUBMITTED this September 8, 2011.

By   
Craig Williams  
Attorney for the Defendant

Copies of the foregoing mailed/faxed this date to  
Hon. Warren Darrow, Judge of the Superior Court  
Hon. David Mackey, Presiding Judge.  
Jeff Paupore, Yavapai County Attorney's Office  
The Defendant

By   
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